

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| CURTIS ROSE, | : | Case No. 1:05cv1018 |
| | : | |
| Petitioner, | : | JUDGE KATHLEEN O'MALLEY |
| | : | |
| v. | : | |
| | : | <u>ORDER</u> |
| CARL S. ANDERSON (Warden), | : | |
| | : | |
| Respondent. | : | |

On February 15, 2006, this Court adopted a Report and Recommendation (“R&R”) from Magistrate Judge David S. Perelman recommending that Petitioner Curtis Rose’s petition for a writ of habeas corpus be denied. (*See* Doc. 12 for the Magistrate Judge’s R&R and Doc. 13 for Court’s adoption). Accordingly, the Court denied the petition and dismissed the case on that date. (Doc. 14). Previously, Petitioner failed to file either a traverse to the return of writ, despite being granted a thirty day extension to do so, or any objections to the R&R recommending that his petition be denied.

On March 31, 2006, Petitioner filed a *Motion for Relief from Judgments, or Orders, Pursuant to Rule 60(b)(1)* (“Motion for Relief”) (Doc. 15), claiming that he did not receive either the order granting his motion for an extension of time to file a traverse, the Magistrate Judge’s R&R, or the Court’s orders adopting the R&R and dismissing his case. On August 14, 2006, Petitioner filed a *Motion to Compel Ruling on Pending Motion for Relief from Judgment* (Doc. 16). This Court referred those post-judgment motions to the Magistrate Judge for preparation of an R&R.

The Magistrate Judge issued on R&R on September 21, 2006 (Doc. 18), recommending that the Court (1) withdraw the Orders of February 15, 2006, which adopted the first R&R and dismissed the case, respectively, (2) direct that the first R&R be withdrawn, and (3) grant Petitioner a sixty day leave to file a traverse. In so recommending, the Magistrate Judge noted that a check of the mail room at Grafton Correctional Institution, where Petitioner is located, reflects that Petitioner did not receive “legal mail” around the time the relevant orders in this case were issued. The Magistrate Judge also recommended denying Petitioner’s request for a copy of the trial transcript and exhibits because they have been filed with the Court.

The Court hereby **ADOPTS** the Magistrate Judge’s R&R of September 21, 2006. Accordingly, this Court:

- (1) **WITHDRAWS** its orders of February 15, 2006 (Docs. 13, 14), which adopted the first R&R and dismissed this case, respectively;
- (2) **DIRECTS** that the Magistrate Judge’s first R&R of January 12, 2006 (Doc. 12) be **WITHDRAWN**;
- (3) **GRANTS** Petitioner a sixty (60) day leave to file a traverse;
- (4) **DENIES** Petitioner’s request for a copy of the trial transcript and exhibits; and,
- (5) **REFERS** this case back to Magistrate Judge David S. Perelman for further proceedings and preparation of a Report and Recommendation once the underlying petition is ripe for adjudication.

IT IS SO ORDERED.

s/Kathleen M. O’Malley
KATHLEEN McDONALD O’MALLEY
UNITED STATES DISTRICT JUDGE

Dated: September 29, 2006